

211 CMR: DIVISION OF INSURANCE

211 CMR 121.00: PROCEDURES CONCERNING FILINGS OF MEDICARE SUPPLEMENT INSURANCE POLICIES AND EVIDENCES OF COVERAGE ISSUED PURSUANT TO A COST CONTRACT, RATES THEREOF, AND THE CONDUCT OF HEARINGS RELATING THERETO

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121.01: Authority

211 CMR 121.00 is promulgated under the authority granted to the Commissioner of Insurance under M.G.L. c. 176K and M.G.L. c. 30A.

121.02: Definitions

As used in 211 CMR 121.00, the following words shall mean:

Certificate: Any Certificate issued, renewed, delivered or issued for delivery in Massachusetts under a group Medicare Supplement Policy.

Commissioner: The Commissioner of Insurance or his or her designee.

Cost Containment Activities: Utilization review programs and other techniques acceptable to the Commissioner which have had or are expected to have a demonstrated impact on the prevention of reimbursement by an Issuer or a Health Maintenance Organization for services which are not medically necessary.

Division: The Division of Insurance.

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Evidence of Coverage: Any Certificate, contract or agreement issued to a Member stating health services and benefits to which the Member is entitled as described in M.G.L. c. 176G, § 7 and M.G.L. c. 176K.

Evidence of Coverage Issued Pursuant to a Cost Contract: An Evidence of Coverage issued by a Health Maintenance Organization pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*) whereby Medicare makes payments to the Health Maintenance Organization on a reasonable cost basis, including health care prepayment plans, and M.G.L. c. 176G, § 7 and M.G.L. c. 176K.

Filer: An Issuer or a Health Maintenance Organization which files a Rate Filing in accordance with the provisions of 211 CMR 69.12.

Health Maintenance Organization or HMO: An entity organized under M.G.L. c. 176G which offers, sells, issues, delivers, or otherwise makes effective, or renews in Massachusetts Evidences of Coverage Issued Pursuant to a Risk or Cost Contract.

Insured: A subscriber, policyholder, member, enrollee or certificateholder under a Medicare Supplement Insurance Policy.

Intervenor: Any person substantially and specifically affected by a Rate Request who has been granted permission to appear and present testimony at a hearing, including, unless otherwise specified, the State Rating Bureau, and all Statutory Intervenors.

Issue: To offer, sell, issue, deliver, or otherwise make effective, or renew.

Issuer: Any company as defined in M.G.L. c. 175, § 1 and authorized to write accident and health insurance; any hospital service corporation as defined in M.G.L. c. 176A, § 1, any medical service corporation as defined in M.G.L. c. 176B, § 1 or any Fraternal Benefit Society as authorized in M.G.L. c. 176 which offers, sells, delivers or otherwise makes effective, or renews in the commonwealth Medicare Supplement Insurance Policies. Issuer shall not include Health Maintenance Organizations.

Medicare: "Health Insurance for the Aged Act" Title XVIII of the Social Security Act Amendments of 1965, as then constituted or later amended.

Medicare Supplement Insurance or Policy: A type of health insurance which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

Member: Any person who has entered into a health maintenance contract, or on whose behalf such an arrangement has been made, with a Health Maintenance Organization for health services and any dependent of such person who is covered by the same contract.

OBRA 90: The federal Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) and as this act is amended from time to time.

Oral Statement: An unsworn statement of position made during a hearing, with the permission of the presiding officer.

Policy: Any Policy, Certificate, contract, agreement, statement of coverage, rider or endorsement issued by an Issuer as defined herein which provides Medicare Supplement Insurance as defined herein other than a Policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 U.S.C. Section 1395, *et seq.*) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which provides Medicare Supplement Insurance as defined herein.

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Presiding Officer: The Commissioner or any person designated by the Commissioner, who conducts health and accident insurance policy rate hearings and proceedings incident thereto pursuant to 211 CMR 121.00 and renders findings, rulings, and decisions thereon.

Rate Filing: Papers or documents by which a Rate Request is made, presented in the format set forth in 211 CMR 121.00.

Rate Request: A proposal by an Issuer for an adjustment to the Medicare supplement insurance rates charged to Insureds or by a Health Maintenance Organization for an adjustment to rates charged to Members under an Evidence of Coverage Issued Pursuant to a Cost Contract.

Responsive Filing: Papers or documents by which an Intervenor introduces its evidence contesting a Rate Filing and identifies issues pertaining to a Rate Filing which it intends to raise in the hearing, pursuant to 211 CMR 121.00.

Revised Rate Filing: Papers or documents by which a Rate Request is re-submitted after a disapproval on the merits of a Rate Filing, which request is responsive to the issues upon which the disapproval was based.

Statutory Intervenor: Any person, including, but not limited to, the Attorney General, which has a statutory right to appear as an Intervenor in a hearing conducted pursuant to 211 CMR 121.00.

Technical Conference: A conference convened by the Presiding Officer to enable the parties to narrow the issues in dispute, to conduct discovery, and to discuss issues pertaining to the calculation of a Rate Request in a Rate Filing.

121.03: Purpose and Scope

The rules established by 211 CMR 121.00 shall govern the form and content of Rate Filings, Responsive Filings, revised Rate Filings, procedures relating thereto, and the conduct of hearings pertaining to Rate Filings for Medicare Supplement Insurance and for Evidences of Coverage Pursuant to a Cost Contract.

121.04: General Provisions

(1) Office. The present location of the principal office of the Division is 470 Atlantic Avenue, Boston, Massachusetts 02210-2223. Should the principal office change, the new address may be obtained by telephoning the Division's general information number. The usual business hours of the office of the Division are from 8:45 A.M. to 5:00 P.M. every day except Saturdays, Sundays and legal holidays.

(2) Filings. The original of all pleadings, motions, documents, or papers relating to a Rate Filing before the Division, including all discovery requests and responses, shall be filed with the Division's Docket Clerk, Hearings and Appeals at the principal office of the Division within the time limits for such filing. For filings of papers other than Rate Filings or Responsive Filings, an original and one copy shall be directed to the Docket Clerk, unless otherwise provided by the Presiding Officer. The Presiding Officer may make any orders as are necessary to ensure the proper filing of papers with the Division and where unspecified by 211 CMR 121.00, the Presiding Officer shall determine how many copies of pleadings, documents, or papers shall be filed. Simultaneously, with the filings of any and all papers with the Division, the party filing such papers shall send a copy thereof to all other parties to the proceeding by delivery in hand, or by facsimile promptly followed by first-class postage pre-paid mail delivery, unless otherwise permitted by the Presiding Officer. Failure to comply with 211 CMR 121.04 shall be grounds for refusal by the Division to accept papers for filing.

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(3) Computation of Time. Computation of any period of time referred to in 211 CMR 121.00 shall begin with the first day after the date of the initiating act. The last day of the period so computed is to be included unless it is a day on which the office of the Division is closed, in which event the period shall run until the end of the next business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is five days or fewer, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation.

(4) Requests for Extensions of Time. The Presiding Officer shall have the discretion to extend any time limit prescribed or allowed by 211 CMR 121.00, provided that such time limits shall be presumed to be reasonable and the party requesting such extension of time shall have the burden of establishing that such extension is necessary to afford it an opportunity for a full and fair hearing. Except as otherwise permitted by the Presiding Officer, all requests for extension of time shall be made by written motion, filed no less than two days before the expiration of the time prescribed by 211 CMR 121.00, or previously extended. The Presiding Officer shall promptly notify all parties of the action taken upon such a motion.

(5) Signatures. Every application, filing, notice, pleading, petition, complaint, motion, brief and memorandum shall be signed by the filing party or by one or more attorneys, or authorized representatives in their individual names on behalf of the filing party. This signature constitutes a certification by the signer that he or she has read the document, knows the content thereof, and that the statements therein are true, that the document is not interposed for delay and that if the document has been signed by an authorized representative that he or she has full power and authority to do so.

(6) Notice of Appointment of Counsel or other Representative and Appearances. Other than the State Rating Bureau, each party to any proceeding shall enter an appearance. Any party which will be represented at a hearing by counsel or other representative shall file and serve an appearance which shall contain the name, address and telephone number of such counsel or other representative on all persons who have previously appeared. An appearance shall identify all authorized representatives on behalf of a party. Any notice required to be given to a party pursuant to 211 CMR 121.00 shall be given to the counsel or other representative named in such party's notice. Nothing herein shall be construed to prevent a party from appearing on its own behalf.

121.05: Provisions Applicable to Rate Filings for Medicare Supplement Insurance and Evidences of Coverage Issued Pursuant to a Cost Contract for Which the Commissioner's Prior Approval is Required

The provisions of 211 CMR 121.05 through 121.10 apply solely to the conduct of hearings on Rate Filings for Medicare Supplement Insurance and Evidences of Coverage Issued Pursuant to a Cost Contract for which the Commissioner's prior approval is required in accordance with 211 CMR 69.12(11)(a)7. or (11)(b)6. and (17). In addition, the provisions applicable to all hearings pursuant to 211 CMR 121.00, govern the conduct of these hearings.

121.06: Pre-Filing Notice

(1) Timing of Notice. Not less than 30 days prior to submitting a Rate Filing for which prior approval by the Commissioner is required in accordance with 211 CMR 69.12(11)(a)7. or (11)(b)6. and (17), a Filer shall notify the Commissioner and all persons who intervened in any rate hearings applicable to the insurance products to be considered within the 12 months preceding the anticipated filing date in writing of its intent to submit a Rate Filing in accordance with 211 CMR 69.12(11).

(2) Purpose. The purpose of the notice shall be to provide the Commissioner and potential Intervenor with information useful to them in preparing more effectively and efficiently for a hearing. Such information may include that which:

- (a) educates potential Intervenor about the rate approval process, health insurance, and the Filer;

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- (b) updates potential Intervenors as to developments pertaining to the insurance products and benefit designs for which a Rate Request is anticipated;
- (c) introduces new Cost Containment Activities or techniques that are then under consideration by the Filer; and
- (d) informs potential Intervenors of any historical data that are then available to the Filer that relate to the benefits that will be included in the Rate Filing.

(3) Failure to provide notice of an anticipated Rate Filing. If a Filer fails to provide notice of an anticipated Rate Filing in accordance with 211 CMR 121.06, the Rate Filing will be deemed to be filed 30 days after the filing date.

121.07: Rate Filings

(1) Purpose. The purpose of the Rate Filing is to furnish sufficient evidence to enable the Commissioner to establish that the rate requested falls within the range of reasonableness. The Rate Filing shall constitute the direct case of the Filer supporting its Rate Request.

(2) Contents. The Rate Filing shall contain:

- (a) a title which indicates the nature of the proceedings, and the complete name and address of the party submitting the filing;
- (b) the name and address of counsel or other designated representative as described in 211 CMR 121.04(6);
- (c) an executive summary containing a description of each element of the Rate Filing and other information as prescribed from time to time by the Commissioner or the Presiding Officer;
- (d) sworn written testimony of all witnesses including all information and commentary necessary to substantiate each element of the Filer's Rate Request;
- (e) all material, including data, statistics, schedules and exhibits which the Filer wishes to present for consideration at the hearing and all information upon which its recommendations are based, so as to enable the Commissioner to assess the reasonableness of each component of the requested rate;
- (f) identification of each witness who submits testimony as part of the Rate Filing, including his or her qualifications to testify on the subject matter he or she addresses, and with sufficient clarity as to enable the Commissioner and the Intervenors to ascertain which witness is testifying as to each component of the Rate Filing;
- (g) all information required to be included by 211 CMR 69.12(11).

(4) Form of Rate Filing. The Rate Filing shall be organized to correspond to the Format prescribed from time to time by the Commissioner or the Presiding Officer.

(5) Amendments. No additions, amendments, or corrections shall be allowed after the submission described in 211 CMR 121.07, except as permitted or requested by the Presiding Officer or in accordance with 211 CMR 121.19(3).

(6) Copies. Eight copies of the Rate Filing shall be filed with the docket clerk, unless the Presiding Officer directs otherwise. Copies of data included in the filings shall be submitted on a 3.5" floppy disk readable in IBM format, ASCII only, unless otherwise permitted in advance by the Commissioner or the Presiding Officer. On the day the Rate Filing is submitted to the Division, one copy shall also be provided to the State Rating Bureau, each Statutory Intervenor, and each Intervenor that has participated in the Filer's last rate proceeding for that insurance product, unless the Filer has been advised by any such party that it does not wish to receive a copy. An additional copy shall be provided to each person permitted to intervene in the hearing within two business days after the Filer receives notice from the Presiding Officer that permission to intervene has been granted.

(7) Supporting information. The Presiding Officer may require a Filer to furnish any data or information which is determined to be necessary or appropriate in connection with the submission of any Rate Filing.

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(8) Copy Available For Inspection. A copy of each Rate Filing shall be available for inspection during normal business hours at the office of the Division from the time of its submission for at least 180 days.

(9) Notification of Subscribers. Notice of any requested premium increase shall be communicated to subscribers no fewer than 90 days prior to the proposed effective date of the request.

(10) Rejection of Rate Filing. The Presiding Officer may within three days after its filing, reject any Rate Filing if he or she determines that the Rate Filing does not comply with requirements as to form and content prescribed by 211 CMR 121.00. A Filer whose Rate Filing has been rejected pursuant to 211 CMR 121.07 may resubmit such Rate Filing with appropriate modifications within four days after its rejection or such other time period as determined by the Presiding Officer.

121.08: Hearing Notice

(1) The hearing on the rate filing shall commence after notice of such hearing has been published in accordance with 211 CMR 121.08. The Filer shall provide all advertisements in, and notifications to, newspapers of the rate hearing required by 211 CMR 69.12(11)(c) and (17)(b) for publication in a format and at a time specified by the Commissioner or the Presiding Officer and by 211 CMR 121.08(1).

(a) No less than 21 days prior to the scheduled date of a hearing, the Filer shall give written notice of the hearing by publication in newspapers in Boston, Brockton, Fall River, Pittsfield, Springfield, Worcester, New Bedford, and Lowell. Concurrently with such notice, the Filer shall give notice of the hearing to the State Rating Bureau, to the Attorney General and to any Statutory Intervenor. Each notice shall contain, in a format approved by the Commissioner or the Presiding Officer:

1. a statement of the date, time and location of the hearing;
2. a statement of the subjects and issues involved in the hearing;
3. a statement of procedures for appearing at the hearing; and
4. any other information required by the Commissioner or the Presiding Officer.

(b) The Presiding Officer shall provide the Filer with the hearing date, all information to be included in the hearing notice, and the format of such notice.

(2) The Filer shall file the hearing notice with the Division in accordance with 211 CMR 121.04(2) no later than 30 days before the hearing. The Filer shall file copies of all newspaper tear sheets no later than 21 days thereafter. The Presiding Officer may require additional evidence of compliance with 211 CMR 121.08(1).

121.09: Responsive Filings

(1) Purpose. The Responsive Filing shall be submitted by all Intervenor and shall identify the grounds upon which the State Rating Bureau, each Statutory Intervenor, and any other Intervenor is contesting the reasonableness of the Rate Filing. The Responsive Filing shall constitute the direct case of each Intervenor, including the State Rating Bureau and all Statutory Intervenor.

(2) Timing. The Presiding Officer shall designate a date, which shall be no more than ten days following the conclusion of the cross and redirect examination of the Filer's witnesses with regard to the Rate Filing, by which time the Statutory Intervenor and other Intervenor each shall file a Responsive Filing with the docket clerk. The State Rating Bureau shall file a Responsive Filing with the docket clerk two days thereafter, unless the Presiding Officer, in his or her discretion, orders another time period.

(3) Contents. Every Responsive Filing shall contain:

- (a) a title which indicates the nature of the proceedings involved therein, and the complete name and address of the party submitting the filing;
- (b) the name and address of counsel, or authorized representative, if the filing party is so represented;

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- (c) a statement of the issues the Intervenor intends to present for consideration at the hearing;
- (d) a statement in short and plain terms of the specific components of the Rate Filing to which the Intervenor objects;
- (e) a statement in short and plain terms of the legal grounds pursuant to which the Intervenor intends to argue that the filing or a part thereof should be disapproved;
- (f) at the Intervenor's option, any recommended alternative rate adjustment, which the Intervenor contends is supported in the record, for any element of the Rate Filing on which an Intervenor submits evidence;
- (g) sworn written testimony of all witnesses including all information and commentary necessary to substantiate any recommendations made therein;
- (h) all available material, including data, statistics, schedules, and exhibits, necessary to substantiate any recommendations made therein;
- (i) identification of each witness who submits testimony as part of the Responsive Filing, including his or her qualifications to testify on the subject matter he or she addresses, and with sufficient clarity as to enable the Presiding Officer and other parties to ascertain which witness is testifying as to each component of the Responsive Filing.

(4) Form of Responsive Filing. A Responsive Filing shall be organized so as to correspond to the format prescribed from time to time by the Commissioner or the Presiding Officer.

(5) In his or her discretion, the Presiding Officer may order that evidence introduced by Intervenor be submitted orally rather than in pre-filed format.

(6) Amendments. No additions, amendments, or corrections shall be allowed after the submission described in 211 CMR 121.09, except as permitted or requested by the Presiding Officer or in accordance with 211 CMR 121.19(3).

(7) Copies. Eight copies of the Responsive Filing shall be filed with the docket clerk, unless the Presiding Officer directs otherwise. Copies of data included in the filings shall be submitted on a 3.5" floppy disk readable in IBM format, ASCII only, unless otherwise permitted in advance by the Commissioner or the Presiding Officer. On the day the Responsive Filing is submitted to the Division, one copy shall also be provided to the Filer and to each other Intervenor.

(8) Supporting Information. The Presiding Officer may require an Intervenor to furnish any data or information which is determined to be necessary or appropriate in connection with the submission of a Responsive Filing.

(9) Copy Available for Inspection. A copy of each Responsive Filing shall be available for inspection during normal business hours at the office of the Division for at least 90 days subsequent to its submission.

(10) Consolidation of Appearances. If the Presiding Officer determines that two or more parties have submitted Responsive Filings or intend to present arguments which are similar in scope, he or she may, in his or her discretion, require those parties to consolidate their appearances.

(11) Rejection of Responsive Filings. The Presiding Officer may within three days after its filing, reject any Responsive Filing if he or she determines that the filing does not comply with requirements as to form and content prescribed by 211 CMR 121.00. An Intervenor whose filing has been rejected pursuant to 211 CMR 121.09 may resubmit such Responsive Filing within the time period specified by the Presiding Officer, which shall be no more than four days after its rejection with appropriate modifications.

121.10: Scheduling of Hearing

Timing and Order of Presentation of the Hearing. No more than 30 days following the filing date, the hearing shall commence. The hearing shall run from day to day and shall be conducted in the following order, and in accordance with the orders issued by the Presiding Officer at or after the pre-hearing conference:

(1) Public comment. Oral statements from interested persons and organizations. Oral statements as described in 211 CMR 121.21(5) may be made at the commencement of the hearing or at any other time as permitted by the Presiding Officer. Opening statements of the parties may be made in the discretion of the Presiding Officer during this or a later stage of the hearing.

(2) Hearing on the Filer's Rate Filing. If any parties have intervened, cross-examination, redirect and recross-examination of the Filer's witnesses shall take place in the order designated in the pre-hearing conference. No more than ten hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties. If no party has intervened, the Presiding Officer shall conduct an examination of any of the Filer's witnesses.

(3) Hearing on the Intervenors' Responsive Filings or Examination of Intervenors' Witnesses. If any party has intervened, and Responsive Filings have been filed, the Presiding Officer shall designate a date, which shall be no later than six days following the filing of the Intervenors' Responsive Filings, by which time cross-examination, redirect and recross-examination of any of the Intervenors' witnesses in the order designated in the pre-hearing conference shall take place. If the Presiding Officer has ordered that an Intervenor may present oral direct evidence, such evidence shall be heard before cross-examination of the Intervenors' witnesses. No more than seven hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties.

121.11: Provisions Applicable to Hearings on Medicare Supplement Insurance Rate Filings Initiated by the Commissioner

The provisions of 211 CMR 121.11 through 121.14 apply solely to the conduct of hearings on Medicare Supplement Insurance Rate Filings initiated by the Commissioner in accordance with 211 CMR 69.12(11)(a)6. and 69.12(16). In addition the provisions applicable to all hearings pursuant to 211 CMR 121.00 govern the conduct of these hearings.

121.12: Hearing Notice

(1) No less than 14 days prior to the scheduled date of a hearing, the Commissioner shall give written notice of the hearing by publication in newspapers in Boston, Springfield and Worcester. Concurrently with such notice, the Commissioner shall give notice of the hearing to the Issuer which submitted the Rate Filing, to the State Rating Bureau, to the Attorney General and to any Statutory Intervenor. Each notice shall contain:

- (a) a statement of the date, time and location of the hearing;
- (b) a statement of the subjects and issues involved in the hearing; and
- (c) a statement of procedures for appearing at the hearing.

(2) At the time of issuance of the Notice of Hearing, the Presiding Officer may order the Issuer to submit additional documentation in support of its Rate Filing before the commencement of the public hearing.

121.13: Hearing Record

(1) The Issuer's record at the hearing shall consist of the Rate Filing which it has submitted to the Division. The Presiding Officer, in his or her discretion, may permit or order the Issuer to supplement its Rate Filing for the purposes of the hearing.

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(2) In contesting the rate requested by the Issuer, an Intervenor may, but need not, present its own evidence to contest the record presented by the Issuer. The Presiding Officer, in his or her discretion, may determine whether an Intervenor's evidence shall be presented in the form of pre-filed testimony or as oral direct testimony following the testimony of the Issuer's witnesses. The Presiding Officer may order Intervenors to file Responsive Filings as defined in 211 CMR 121.09.

121.14: Scheduling of Hearing

Timing and Order of Presentation of the Hearing. No more than 30 days following the filing date, the hearing shall commence. The hearing shall run from day to day and shall be conducted in the following order, and in accordance with the orders issued by the Presiding Officer at or after the pre-hearing conference:

(1) Public comment. Oral statements from interested persons and organizations. Oral statements as described in 211 CMR 121.21(5) may be made at the commencement of the hearing or at any other time as permitted by the Presiding Officer. Opening statements of the parties may be made in the discretion of the Presiding Officer during this or a later stage of the hearing.

(2) Hearing on the Issuer's Rate Filing. If any parties have intervened, cross-examination, redirect and recross-examination of the Issuer's shall take place in the order designated in the pre-hearing conference. The Presiding Officer may order the Filer to present direct testimony in advance of any cross-examination. No more than ten hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties. If no party has intervened, the Presiding Officer shall conduct an examination of any of the Issuer's witnesses.

(3) Hearing on the Intervenors' Testimony. If any party has intervened, and any Responsive Filings have been filed, the Presiding Officer shall designate a date, which shall be no later than six days following the filing of the Intervenors' Responsive Filings, by which time cross-examination, redirect and recross-examination of any of the Intervenors' witnesses in the order designated in the pre-hearing conference shall take place. If the Presiding Officer has ordered that an Intervenor may present oral direct evidence, such evidence shall be heard before cross-examination of the Intervenors' witnesses. No more than seven hearing days may be devoted to such examination. The Presiding Officer has the discretion to limit examination by parties.

121.15: General Provisions Applicable to All Hearings

The provisions of 211 CMR 121.01 through 121.04 and 121.15 through 121.27 apply to all hearings conducted pursuant to 211 CMR 121.00, *et seq.*

121.16: Intervention

At any time after the filing date, but no more than four days following notice of a hearing in accordance with 211 CMR 121.08 or 121.12, each Statutory Intervenor intending to participate in the proceeding shall file with the Division and serve on the Filer, the State Rating Bureau, and all Statutory Intervenor a notice of intent to participate. Any person that wishes to appear and present testimony at the hearing, other than the State Rating Bureau, Statutory Intervenor, or the Filer, shall simultaneously file with the Division and serve upon the Filer, the State Rating Bureau and all Statutory Intervenor and previously permitted Intervenor a petition for leave to participate as an Intervenor together with its grounds therefor and a description of the extent of its proposed participation. Such petition shall include a statement explaining why the petitioner's interests will not be adequately represented by the persons previously made parties to the hearing and how the petitioner will avoid introduction of repetitive testimony and not add undue delay to the hearing. Any party opposing a petition to intervene must file a written objection to such petition, setting forth the grounds for its objection, no later than two days after service of the petition. The Presiding Officer may schedule a hearing concerning the petition, and shall rule on the petition no later than two days after service of an objection to a petition.

121.17: Discovery

(1) Requests for Discovery. Any party to a rate hearing governed by 211 CMR 121.00 may request any other party to produce or make available any documents or tangible things, not privileged, not previously supplied, and which are in the custody or control of the party upon whom the request is made. The discovery request may be served upon the party after submission of the Rate Filing or a Responsive Filing and shall set forth the items to be provided with reasonable particularity. Discovery may be requested at any time before the conclusion of the hearing; provided, however, that discovery pertaining to a Rate Filing or a Responsive Filing may be served after the commencement of the examination of witnesses supporting that Rate Filing or Responsive Filing only upon motion; and provided further that such discovery shall not be grounds to delay the hearing except for good cause shown and in the discretion of the Presiding Officer. All discovery shall be conducted expeditiously.

In the case of Rate Filings subject to the Commissioner's prior approval, the request may be served upon the party after submission of the Rate Filing or Responsive Filing. In the case of hearings initiated by the Commissioner, the request may be served upon any party after the Presiding Officer has allowed a party's motion to intervene in the proceeding.

All discovery requests by any party upon any other party regarding the Rate Filing, any Responsive Filing, any evidence, or any written argument or statement of issues submitted shall be filed with the Division and served in hand upon all parties. The Presiding Officer may serve discovery on any party. Should a request be served upon the Division or the State Rating Bureau, the Division or the State Rating Bureau shall be entitled to the fee per page for copies as determined from time to time by the Executive Office of Administration and Finance, unless the Presiding Officer, in his or her discretion, waives such fee.

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(2) Responses to Discovery. Answers to discovery requests made by any party shall be filed with the Division and served in hand upon all parties no more than five days following receipt of the request unless the Presiding Officer establishes a shorter or longer time period. A party upon which a request for discovery is served may, within two days of service of the request or such other time period as is designated by the Presiding Officer, file with the Presiding Officer objections to the request or a motion for a protective order, provided that such a party has first attempted in good faith to resolve the grounds for its objection or motion with the party seeking discovery. A party opposing such objection or motion shall advise the Presiding Officer of any opposition within two days after the filing of the original objection or motion, provided that such a party has first attempted in good faith to resolve the grounds for its opposition with the party objecting to discovery. The Presiding Officer shall expeditiously rule on such objection or motion, and may schedule a hearing thereon. Protective orders and/or sanctions, as provided for in 211 CMR 121.17(4), may be issued to protect a party from annoyance, embarrassment, oppression or undue burden or expense, or to prevent undue delay in the hearing. Orders of the Presiding Officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential or privileged information or documents, consistent with applicable statutes. Responses to discovery requests ordered to be made by the Presiding Officer shall be made within five days of the Presiding Officer's order or within such other time period as ordered by the Presiding Officer.

(3) Additional Discovery. The Presiding Officer may in his or her discretion permit additional discovery if any party is permitted to amend or supplement a filing, as provided in 211 CMR 121.07(5), 121.09(6) and 121.19(3).

(4) Sanctions. The Presiding Officer may in his or her discretion impose sanctions on any party whose discovery responses are untimely, evasive or incomplete and on any party whose discovery requests cause annoyance, embarrassment, oppression or undue burden or expense. Such sanctions may include orders for judgment on one or more issues, limitations on the introduction of evidence on one or more issues, and/or other orders the Presiding Officer deems appropriate in the exercise of his or her discretion.

121.18: Technical Conference

No earlier than ten days and no later than 15 days following the issuance of the Notice of Hearing, if any party has intervened, the Presiding Officer may, in his or her discretion, conduct a Technical Conference with all parties. If no party has sought to intervene, the Presiding Officer may conduct a Technical Conference with the Filer or Issuer. The purpose of the conference shall be to narrow the issues to be contested in the hearing and to conduct discovery of matters pertaining to Cost Containment Activities and the technical ratemaking calculations employed by the Filer or Issuer. Such discovery may include, but shall not be limited to, the data employed, the projection trends selected, and the external data relied on by the Filer or Issuer. The Presiding Officer shall have the authority to compel production of non-privileged information requested by an Intervenor necessary to expedite preparation for the hearing. The Presiding Officer may consider any proposed stipulations at the Technical Conference. The conference shall be recorded, and shall be treated as discovery; provided, however, that in his or her discretion, the Presiding Officer may order that all or part of the Technical Conference transcript be admitted as a part of the hearing record.

121.19: Pre-Hearing Motions

Pre-hearing motions must be filed in accordance with the following schedule:

(1) No later than 21 days following the date of the Notice of Hearing, any Intervenor may file a motion to dismiss the filing or for judgment on any or all issues raised by the Rate Filing on the ground that the Rate Filing contains insufficient evidence to substantiate the recommendations, or otherwise fails to comply with the filing requirements established in 211 CMR 121.00 or the filing requirements established in 211 CMR 69.12(11), including insufficient description of the rationale for the elements prescribed by the Commissioner.

121.19: continued

(2) No later than three days following the filing of any Responsive Filing, the Filer may file a motion to dismiss the Responsive Filing or for judgment on any or all issues raised by the Responsive Filing on the ground that the Responsive Filing contains insufficient description of the rationale on which the Intervenor contests the elements of the Rate Filing prescribed by the Commissioner or insufficient description of the rationale for any alternative rate adjustment element contained in the Responsive Filing.

(3) The Presiding Officer may, in his or her discretion, permit a party to amend its Rate Filing or Responsive Filing in order to address the issues raised by pre-hearing motions, including motions to dismiss, or to add or revise data based on information obtained from the federal Health Care Financing Administration; provided that such an amendment does not represent a significant change to the filing.

(4) All other pre-hearing motions, not specifically addressed in 211 CMR 121.00, shall be filed before the pre-hearing conference.

(5) The filing of any pre-hearing motion shall not affect any time frames provided in 211 CMR 121.00.

121.20: Pre-Hearing Conference

Before the hearing the Presiding Officer shall hold a pre-hearing conference with all parties to consider:

- (1) the simplification or clarification of the issues;
- (2) the possibility of obtaining stipulations, admissions, and agreements on documents and on matters already of record which will avoid unnecessary proof;
- (3) the limitation of the number of expert witnesses or avoidance of similar cumulative evidence;
- (4) the identification of witnesses who will be cross-examined at the hearing and the determination of their order of appearance;
- (5) the possibility of agreement disposing of all or any of the issues in dispute;
- (6) the conduct and format of the hearing, in the event that no parties have intervened;
- (7) such other matters as may assist in the disposition of the proceeding.

121.21: Conduct of Hearing

(1) Hearing Docket. The Division shall maintain a hearing docket for each Rate Filing and shall assign a number to each docket. The Division shall enter in such docket all documents relating to each proceeding to which 211 CMR 121.00 applies.

(2) Presiding Officer. The hearing shall be conducted by the Presiding Officer who shall administer oaths and affirmations and make all decisions regarding the admission or exclusion of evidence and testimony or any other procedural matters which may arise in the course of the hearing. The Presiding Officer shall also draw up a schedule for hearings taking into account the goal of concluding a proceeding in an expeditious manner, and may order the consolidation of related hearings. The Presiding Officer may shorten or terminate any phase of the hearing for a party's failure, in the absence of reasonable cause, to comply with the schedule or to proceed with expedition. The Presiding Officer may grant a motion to extend or to shorten a time period at the request of a party or on his or her own motion if he or she determines that an extended or shortened time period is appropriate.

121.21: continued

(3) Cross-Examination. Every party shall have the right to require that any adverse party's witnesses be made available to be cross-examined, provided the party has indicated it intends to conduct such cross-examination sufficiently in advance to permit the orderly conduct of the hearing.

(4) Rebuttal and Surrebuttal Filings. Any party seeking to submit additional evidence by way of rebuttal or surrebuttal testimony in denial of an affirmative fact which an adverse party has endeavored to prove may, on motion, submit such testimony at the discretion of the Presiding Officer, and in accordance with the schedule determined by the Presiding Officer. A party seeking to introduce rebuttal or surrebuttal evidence shall inform the Presiding Officer as soon as practicable of its desire to do so, and shall include in its motion the subject of the proposed evidence, the reason why further testimony at this stage of the proceeding is necessary and the identity and availability of any witnesses. The Presiding Officer may in his or her discretion, order oral or written rebuttal or surrebuttal evidence.

(5) Oral and Written Statements. The Presiding Officer may specify the amount of time allowed to any speaker for his or her Oral Statement. Although oral and written statements shall generally be heard or submitted at the commencement of a hearing, the Presiding Officer may, in his or her discretion grant permission to any person to make an Oral Statement or submit a written statement at any time during the hearing. If he or she determines that an Oral Statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker. Persons making Oral Statements shall not be sworn as witnesses. The Presiding Officer may permit the submission of written statements in lieu of or in addition to Oral Statements. Such written statements need not be sworn testimony.

(6) Motions. The Presiding Officer may make rulings during the hearing regarding the admissibility of evidence or any other matter which may arise during a hearing. Any party making application to the Presiding Officer for a ruling shall do so by motion which shall state the ruling sought and the grounds therefor. The Presiding Officer may require that a motion be presented in writing. The Presiding Officer may, in his or her discretion, hear oral argument on a motion prior to making a decision thereon.

(7) Objections to Rulings. At the time that a ruling of the Presiding Officer is made or sought any party may make known its objection to the rulings and its grounds therefor; provided that if a party has no opportunity to object to a ruling at the time it is made, such party may, within three days of the ruling, state in writing its objection and its grounds therefor.

(8) Official Notice. The Presiding Officer may take official notice of any fact which may be judicially noticed by the courts of this Commonwealth and, in addition, may take official notice of general, technical or scientific facts within his or her specialized knowledge and/or experience; provided, that the Presiding Officer shall notify all parties of the material so noticed; and provided further that any party, upon timely request, be afforded an opportunity to contest the facts so noticed. The Presiding Officer may utilize his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to him or her.

121.21: continued

(9) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of the United States or of Massachusetts, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude testimony or evidence which he or she determines to be unduly repetitious or to have an unreasonably dilatory effect upon the hearing process, or which he or she determines should have been submitted as part of a Rate Filing or Responsive Filing. All evidence, including any records, investigation reports and documents in the possession of the Division of which the Presiding Officer desires to avail him or herself in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference, if permitted by the Presiding Officer.

(10) Additional Evidence. At any stage of the hearing, the Presiding Officer may call for further evidence upon any issue, and require such evidence to be presented by any party. The Presiding Officer may, in his or her discretion and for good cause shown, permit a party during the hearing to introduce exhibits and raise issues not included in its Rate Filing or Responsive Filing.

(11) Control of Testimony. The Presiding Officer shall have the right to question witnesses at any time in the course of their testimony. Where he or she determines that the testimony of the witness is irrelevant, immaterial or repetitious, he or she may order the witness to limit or omit further testimony on a certain subject or to cease his or her testimony altogether, or order all or portions of the testimony to be stricken. In the event that any witness who has given written or oral testimony or has been identified as responsible for part of a Rate Filing or Responsive Filing, is unavailable for cross-examination on that testimony or part of a filing at the hearing, all such written testimony or part of a filing shall be removed from the record unless the Presiding Officer determines that no party would be unduly prejudiced by its inclusion. For the purpose of 211 CMR 121.21(11), "unavailable" shall include, without limitation, situations in which the witness (a) is absent from the hearing, or (b) unreasonably obstructs cross-examination despite an order from the Presiding Officer.

(12) Offers of Proof. Any offer of proof made in connection with an objection to a ruling by the Presiding Officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party making such offer contends would be adduced by the testimony. If the rejected or excluded evidence consists of documents or records, or of references to documents or records, a copy of such documents, records or references shall be marked for identification and shall constitute the offer of proof. The Presiding Officer may require that the offer of proof be submitted in writing.

(13) Stipulations. At any stage of the hearing, the parties may either orally or in writing stipulate to any pertinent fact. At any stage of the proceeding, the parties may file a written stipulation with respect to any pertinent fact. If the Presiding Officer decides to reject any such stipulation, he or she shall so state on the record and, as otherwise appropriate, give the parties the opportunity to present evidence and argument on such issue or matter.

(14) Oral Argument. The Presiding Officer may, either on his or her own motion or on the motion of any party, allow and designate time for the presentation of oral argument. The Presiding Officer shall consider the following factors: the complexity or importance of the issues, the public interest to be served, and the availability of time.

(15) Conduct of Persons Present. All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Presiding Officer may take such action as he or she deems appropriate to maintain order, including the exclusion of any disorderly person from the hearing. If the person so excluded is a party or its agent, the Presiding Officer may decide against such party with prejudice.

121.21: continued

(16) Transcripts. All proceedings in a hearing shall be officially recorded and transcribed by a reporter subject to the approval of the Presiding Officer. The Filer or the Issuer, where applicable, shall pay the cost of the reporter's fees, together with the cost of providing the Division with the original and one copy of the transcript and the State Rating Bureau and each Statutory Intervenor with one copy thereof. Other parties may obtain copies of the transcript from the reporter at cost.

121.22: Briefs

(1) Parties may file briefs if so directed by the Presiding Officer within a period set by the Presiding Officer in his or her discretion, which shall be no more than 14 days following the completion of the hearing. Each party who files a brief shall submit five copies thereof to the docket clerk and serve one copy thereof on each other party, unless the Presiding Officer directs that a different number of copies be served. The Presiding Officer may set a page limit for briefs. Each brief shall include:

- (a) a concise statement of the case;
- (b) a summary of arguments with supporting evidence cited to the record; and
- (c) a conclusion stating the specific relief requested.

(2) Parties may submit reply briefs if permitted by the Presiding Officer in his or her discretion, within a period set by the Presiding Officer in his or her discretion, which shall be no more than four days following the filing of an opposing party's brief. Reply briefs shall be in accordance with the terms of 211 CMR 121.22.

121.23: Presiding Officer

(1) The Presiding Officer shall make all decisions regarding any procedural matter which may arise in the course of the proceeding, and may issue any such orders as he or she finds proper, expedient or necessary to enforce and administer the provisions of M.G.L. c. 176K or, where applicable, M.G.L. c. 30A. The Presiding Officer may shorten or terminate any phase of the proceeding for a party's failure, in the absence of reasonable cause, to comply with the schedule or to proceed with expedition. At any time during the proceeding, the Presiding Officer may grant a motion to extend or to shorten a time period at the request of a party or on his or her own motion if he or she determines that an extended or shortened time period is appropriate.

(2) Ex Parte Communications. From the filing date until the rendering of a final decision no person who is not employed by the Division shall communicate ex parte with the Presiding Officer with respect to the merits of this proceeding; provided that a request for a report concerning the status of a proceeding or an inquiry as to the Division's practice or procedure shall not be prohibited by 211 CMR 121.23(2), but the party making such inquiry must first inform all other parties of its intent to do so. If the Presiding Officer determines that a party or its attorney or authorized representative has violated this provision he or she may exclude such party from the hearing or the proceeding or decide against it with prejudice. If the Presiding Officer determines that a person not a party has violated this rule, he or she may exclude that person from the hearing or the proceeding.

121.24: Decisions

(1) The decision of the Presiding Officer shall be in writing or stated in the record no more than 30 days following the conclusion of the public hearing. The Presiding Officer shall notify all parties of the decision, of their right to appeal the decision, and of the time within which to appeal.

121.24: continued

(2) The decision shall approve or disapprove each separate element of the requested rate increase, and shall be accompanied by a statement of reasons therefor, including determination of each issue of fact or law necessary to the decision. Rates that are approved shall be effective not earlier than 30 days subsequent to such approval. For any element that is disapproved, the Presiding Officer shall indicate the alternative value or component that he or she finds reasonable, if any, and the reasons therefor. If any element is disapproved, the Filer or Issuer may make a Revised Rate Filing that conforms with the alternative values or components that the Presiding Officer indicated are reasonable.

(3) The submission and approval of a revised Rate Filing by the Filer or Issuer shall not affect its right to appeal from those elements of the requested rate increase that were disapproved as provided in 211 CMR 121.26.

121.25: Revised Rate Filing

(1) Contents. A Revised Rate Filing shall be made within the time period specified in the Presiding Officer's decision and shall be limited to such response necessary to meet the requirements set forth in the decision by the Presiding Officer on the Rate Filing and shall contain all data and analyses required by the Presiding Officer in his or her decision, but need not otherwise comply with the format set forth in 211 CMR 121.00.

(2) Proceedings on Revised Rate Filings. Promptly after the submission of the revised Rate Filing, the Presiding Officer will hold a hearing with all those who were party to the original proceeding. At that hearing, the Presiding Officer may hear argument and/or evidence concerning whether the revised Rate Filing meets the requirements set forth in the Presiding Officer's decision. After the conclusion of the hearing, if the Presiding Officer determines that the revised Rate Filing meets the requirements set forth in his or her decision, the revised Rate Filing shall be approved. If he or she determines that it does not, the Filer or Issuer may, with leave of the Presiding Officer, be permitted to revise the filing further to meet such requirements.

121.26: Appeals

Any subscriber, Filer, Issuer, or other person aggrieved by the decision of the Presiding Officer may appeal that decision in accordance with M.G.L. c. 26, § 7. Any subscriber, Filer, Issuer, or other person aggrieved by the final decision of the Commissioner may within 20 days from the filing of his or her decision file a petition in the Supreme Judicial Court for the county of Suffolk for review of such decision. Any order, decree, or judgment of the Supreme Judicial Court modifying, amending, annulling or reversing such decision or any further decision of the Commissioner pursuant to such an order, decree, or judgment which affects the overall rate approved shall be effective as of the effective date permitted by the order from which the appeal was taken.

121.27: Suspension or modification of the requirements of filing or prior approval of contracts and rates

The Commissioner may by written order suspend or modify the requirements of filing or prior approval of contracts and rates to ensure compliance with and consistency between Massachusetts and federal Medicare Supplement Insurance requirements, including the requirements of OBRA 90, or to prevent inequity to subscribers or to the Filer or Issuer.

REGULATORY AUTHORITY

211 CMR 121.00: M.G.L. chs. 176K and 30A.